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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD


Proceeding	91212445
Party	Plaintiff Red Bull GmbH
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Date	08/30/2016
Attachments	RB v. Bullstone - 91212445 - Mtn to Extend Deadline to Complete Domestic Depos.pdf(128534 bytes )

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this correspondence is being filed with the TTAB electronically via ESTTA on August 30, 2016.

/Angelique M. Riordan/  
Angelique M. Riordan

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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<b>RED BULL GMBH,</b>	)		
	)	<b>Opposition No.:</b>	<b>91-212,445</b>
<b>Opposer,</b>	)	<b>Trademark:</b>	<b>Bull Device with Shield</b>
	)		
<b>v.</b>	)		
<b>BULLSONE CO., LTD.</b>	)		
	)	<b>Serial No.:</b>	<b>79/106,767</b>
<b>Applicant.</b>	)		
_____	)		

**OPPOSER'S MOTION FOR EXTENSION OF DEADLINE TO CONDUCT  
DOMESTIC DEPOSITIONS, WITHOUT CONSENT**

Opposer, Red Bull GmbH, ("Red Bull" or "Opposer") moves the Trademark Trial and Appeal Board to extend Opposer's deadline to conduct its domestic depositions by 45 days (to October 31, 2016) due to Opposer's lead counsel's inability to travel due to his recent cervical disk fusion surgery. The undersigned has explained the medical issue to Applicant's counsel, but they have declined to consent to any extension.

**FACTS NECESSITATING THIS REQUESTED EXTENSION**

Martin R. Greenstein, Applicant's lead counsel (from the very inception of these proceedings), underwent unanticipated and urgently scheduled cervical disk fusion surgery on July 28, 2016, involving fusion of levels C4-5 and C5-6, with supporting titanium inserts affixing the vertebrae in place. The surgery was done by Dr. Stephen Ryu at Sequoia Hospital, in Redwood City, CA. Post-surgical activities have been extremely limited, with Mr. Greenstein on significant pain control medication prescription (Percoset 10/325) and necessitating the wearing of a cervical collar for six weeks (until September 7, 2016, and possibly slightly longer). Mr. Greenstein was instructed to lift no more than five (5#) pounds until September 1, 2016, and no

more than ten (10#) pounds for the following month. As a result, Mr. Greenstein's time in the office has been significantly curtailed, assistance has been required in transportation (depending on pain levels) and, without the ability to lift even a computer bag or briefcase, travel through at least September 30, 2016 is essentially not possible. Beginning October 1, 2016 these restrictions should ease, travel should be possible and Mr. Greenstein will be able to resume a more reasonable schedule.

Mr. Greenstein expanded on the earlier brief comments about his medical situation to Applicant's counsel Michel Stein in an email dated August 24, 2016, stating:

*I don't yet have dates for the two witnesses, because of my medical situation and inability to travel. As I mentioned in my August 18th email (and thank you for the good wishes for recovery), on July 28 I had cervical fusion surgery (two levels, C4-5/C5-6) with titanium clamps and disc inserts to assist in the fusion. I am wearing a special cervical collar until at least after Labor Day, and am restricted to lifting 5# now, which will increase to 10# in September. Because of that and the strong pain meds (Percoset 10/325) I will be medically unable to travel to Los Angeles until at least late September. I understand and appreciate that you "will not agree to extend any dates unless there is an agreement in principle on the terms of a settlement", but if we are not able to agree on terms I will file an appropriately-supported motion with the Board, and would be quite surprised if an extension of time is not granted under these circumstances.*

The actual email is not attached because it included discussions relating to possible settlement.

### **BACKGROUND**

On May 28, 2015, Opposer filed and served its Notice of Taking Testimony of Jorge Casals on Written Questions, noting that Opposer also has domestic depositions to schedule after the noticed deposition on written questions and requesting that the Board provide sufficient time to take these domestic depositions following the procedure for the deposition on written questions.<sup>1</sup> On July 6, 2015, the Board suspended proceedings pending the deposition on written questions of Jorge Casals.<sup>2</sup> As proceedings have been suspended since this July 6, 2015 Board Order, Opposer's domestic depositions have not yet been completed. On August 17, 2016, the Board issued an Order, continuing the suspension of Opposition No. 91-212,445 pending the deposition on

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<sup>1</sup> See Plaintiff's Notice of Taking Testimony, Docket No. 14 (May 28, 2015).

<sup>2</sup> See Board Suspension Order, Docket No. 17 (July 6, 2015).

written questions of Jorge Casals and providing Opposer with 30-days, or until September 16, 2016, to complete its domestic depositions.<sup>3</sup>

The following day, on August 18, 2016, Opposer's counsel emailed Applicant's counsel, seeking to schedule a conference call to follow up on Applicant's response to a recent settlement proposal "before we start lining up dates for depositions," and noting Opposer's lead counsel's recent serious cervical fusion surgery and limited work schedule during recovery. The parties were able to coordinate a conference call on August 25, 2016 and, in addition to settlement discussions, Opposer's counsel requested Applicant's consent to an extension of Opposer's deadline to complete its domestic depositions in light of Opposer's counsel's inability to travel during recovery. Applicant denied this request, leading Opposer to file the instant motion.

### **LEGAL ANALYSIS**

This motion is being filed soon after the Board's August 17 order and well before Opposer's September 16, 2016 deadline to complete its domestic depositions. Indeed, Opposer's counsel contacted Applicant the day after the Board's August 17 order to note his recent surgery and limited work schedule during recovery and to request a conference call, during which time Opposer would ask Applicant's consent to an extension. During this scheduled conference call, Opposer's counsel did, in fact, ask Applicant's counsel for consent to an extension for medical reasons, a request Applicant denied. Applicant's counsel provided additional detail on his medical situation in the email of August 24, 2016, quoted above. Thus, not only is this motion timely, but Opposer has acted very promptly. Opposer need only establish "good cause" for the requested extension.<sup>4</sup> Generally, "the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused."<sup>5</sup> Here, Opposer's request is based on Opposer's counsel's current medical condition and required recovery.

Here, as shown above, good cause has been established. Not only has Opposer been extremely diligent, it certainly has not been guilty of negligence or bad faith. In addition, the privilege of extensions has not been abused in that the two extensions – earlier in this case – were for settlement discussions and were due to

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<sup>3</sup> See Board Order, Docket No. 23 (August 17, 2016).

<sup>4</sup> Fed. R.Civ. P. 6(b)(1)(A).

<sup>5</sup> *American Vitamin Products Inc. v. DowBrands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992).

Applicant's counsel's travel unavailability, and the following two extensions were filed with either good cause, which was acknowledged by the Board, or with Applicant's consent.

**THE REQUESTED EXTENSION WILL NOT PREJUDICE APPLICANT**

**OR DELAY PROCEEDINGS**

Finally, Applicant will not be prejudiced by the requested 45 day extension to October 31, 2016 where Opposer's testimony period is still suspended pending the deposition on written questions of Jorge Casals. Opposer's Request for Letters Rogatory is still being processed and must still go through several levels of governmental approval in the United States and Europe. As such, a 45-day extension will not further delay proceedings and will not prejudice Applicant.

**CONCLUSION**

In view of the foregoing, Opposer requests that its deadline to complete its domestic depositions be extended by 45 days to October 31, 2016.

Dated: August 30, 2016

Respectfully submitted,

/Martin R. Greenstein/  
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**DECLARATION**

I, Martin R. Greenstein, hereby declare under penalty of perjury of the laws of the United States of America, that the facts relating to my recent surgery and current medical condition set forth above in the section "Facts Necessitating This Extension" are true and correct.

Executed this 30 day of August, 2016.

/Martin R. Greenstein/  
Martin R. Greenstein

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing **OPPOSER'S MOTION FOR EXTENSION OF DEADLINE TO COMPLETE DOMESTIC DEPOSITIONS, WITHOUT CONSENT** is being served on August 30, 2016, by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to counsel for Applicant (with courtesy copies by email) at:

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